

GENERAL CONDITIONS ON SALE AND DELIVERY (GCSD)

I. Preamble

1. The following General Conditions on Sale and Delivery (hereinafter referred to as GCSD) shall be applicable to all business relations of Matuschek Meßtechnik GmbH Alsdorf (hereinafter referred to as supplier) with the ordering party (hereinafter referred to as orderer) with regard to the delivery of goods and the performance of services (hereinafter referred to as delivery).
2. Agreements which compliment or modify these GCSD require the supplier's consent in writing to be of legal effect. Conflicting business conditions are not recognised, to the exception of those which the supplier gives express consent to.

II. Conclusion of Contract

1. The information, regarding price indications, too, which is contained in brochures, advertisements and other documentation, is not binding. Indications to measures, weight and performance as well as to illustrations are of approximate type only and not binding to the extent to which they are not expressly declared binding.
2. The supplier reserves his unlimited property and copy rights on cost estimates, drawings, blueprints and other documentation as well as on the elements of the calculation of these. They may not be made accessible to third parties unless the supplier's consent in writing is given. The aforementioned documentation is to be returned to the supplier upon request.
3. The labellings and specifications made upon entering into the contract represent the then up-to-date level of technique. The supplier expressly reserves the right to modifications upon deliveries out of this contract as far as they are not of a decisive nature and do not substantially restrict contractual purposes.

III. Extent of Deliveries

1. With regard to the extent of deliveries, mutual declarations in writing shall be decisive. If a contract was made in the absence of such declarations either the supplier's order confirmation in writing shall be decisive, or if this latter one does not exist the orderer's purchase order in writing shall apply.
2. Protection devices shall be included in deliveries as this has been expressly agreed in writing.
3. Partial delivery shall be permissible and may be billed separately to which extent this was contractually agreed.
4. Additional agreements regarding the extent of deliveries require the supplier's consent in writing.

IV. Prices/Conditions of Payment

1. The prices comprise the object of delivery as it was agreed in the contract in addition to packing, set-up or mounting. In each case the supplier immediately bills the sales tax required by law, transportation cost ex works or ex delivery stock as well as the cost for transportation insurance requested separately by the orderer.
2. The orderer bears duties, fees, taxes and other levies which may apply.
3. The orderer is bound to perform net payments for the deliveries 30 (thirty) days at the latest to be counted from the invoice date to the supplier's clearing point unless other contractual agreements were made.
4. If the orderer does not perform payments in due time, the supplier shall be entitled to charge an interest for reason of delay as to which the supplier's bank charges for advances on current accounts, of at least 8 % above the then effective ECB base rate.
5. The orderer may make off-sets only to claims which are not disputed of legally effective.

V. Reservation of Title

1. The objects of the deliveries shall remain the supplier's property until all claims resulting from the business relation he is entitled to against the orderer have been satisfied. In so far as the value of all security rights which the supplier is entitled to exceeds the amount of secured claims by more than 10 (ten) per cent, the supplier shall proportionately release security rights upon request.
2. During the existence of the reservation of title the orderer shall neither be allowed to proceed to a pledge nor to an assignment of security, and he shall proceed to a resale only in the course of usual business and upon the condition that he receives payment from the reseller or upon the condition that the title of property passes to the customer if this latter party has met its payment obligations entirely.
3. a) In the event that the orderer proceeds to a resale of goods under reservation, he shall already now, without prejudice to other provisions, assign as a means of security to the supplier his future claims against his customers which result from the resale including all ancillary rights – which comprises given net-term balances. If the goods under reservation are resold in conjunction with other objects in the absence of an individual price for these goods under reservation, the orderer shall assign to the supplier with priority the particular amount of the overall price claim which corresponds to the price which the supplier invoiced in connection with the goods under reservation.
b) The orderer shall be entitled to collect the assigned claims from the resale, and in doing so be subjected to withdrawal. In the event of an important reason, particularly upon the failure to pay in due time, the termination of payments, the start of an insolvency proceeding, a protest of a bill or in the event of comparable reasons which indicate the orderer's insolvency, the supplier shall be entitled to withdraw the orderer's authorisation of collection. In addition, the supplier may, following a reasonable notice and prior to a threat of disclosing the security assignment, i.e. having made use of the assigned claims, proceed to making use of the assigned claims as well as to requesting the orderer to disclose the assignment of securities against the customer.

4. a) The orderer shall be entitled to process the goods under reservation, remodel them and to connect them to other objects. The processing, remodelling or connection is performed on behalf of the supplier. The orderer keeps the new matter applying the due diligence of a reasonable businessman. The matter which was processed, remodelled or connected shall be considered a good under reservation.
b) In the event of processing, remodelling and connecting to goods which are not owned by the supplier, the supplier shall be entitled to a joint ownership of the new matter to the extent of a share which results from the relation of the value of the good under reservation as it has been processed or remodelled or connected, to the value of the residual processed good at the time of the processing, remodelling or connection. If the orderer acquires the sole ownership of the new matter, the supplier and the orderer shall mutually agree for the orderer to cede to the supplier a right of joint ownership of the new matter that was created by means of processing, remodelling or connection to the relational extent of the value of the residual goods which were processed, remodelled or connected at the time of the processing, remodelling or connection.
c) In the event of the resale of the new matter the orderer shall hereby assign his claim from the reprocessing to the supplier including all ancillary rights as a means of security, not needing to provide further declarations. However, the assignment shall be applicable only as much as to the extent of the amount which reflects the value of the processed, remodelled or connected good under reservation which the supplier invoiced. The proportion of the claim shall be satisfied with priority. With regard to the authorisation of collection as well as to the conditions which are applicable to its withdrawal, the provisions contained in section 3. b) shall be applied.
d) In the event of a connection of the good under reservation to a plot of land or to movable goods, the orderer shall also assign to the supplier, including all ancillary rights, not needing to provide further declarations, as a means of security his claim which he is entitled to the remuneration for the purposes of the connection to as much as is the relational extent of the amount of the connected good under reservation to the residual connected goods which was applicable at the time of the connection.
5. In the event of an attachment, a seizure or otherwise injunction or third-party interventions the orderer shall notify the supplier immediately.
6. In the event of a culpable breach of the orderer of substantial contractual obligations, particularly the failure to perform payments in due time, the supplier shall be entitled to a redemption following a previous reminder. The supplier's redemption or claim of a reservation of property or attachment of the object of delivery does not represent a rescission of contract except for an express declaration of the supplier to do so. The supplier shall be entitled to make use of the good under reservation redeemed and to satisfy himself from the fructuation thereof, setting off the claims which are unsettled.

VI. Delivery Terms/Consequences of Delay

1. The observance of delivery terms requires in timely fashion the receipt of all documents, required permissions, releases and plans which are to be delivered by the orderer as well as the observance of the payment conditions and other obligations. In the event of non-observance, delays shall be reasonably extended.
2. A delay shall be considered observed:
 - a) With regard to deliveries without set-up or mounting, if the delivery ready-for-operation was transferred for shipment or picked up within the period which was agreed and which was applicable to the delivery or to the performance. If the delivery is delayed for reasons the liability of which the orderer must assume the delay shall be considered observed in the event that a notice of readiness for shipment was given within the delay which was agreed.
 - b) With regard to deliveries including set-up or mounting, as soon as these have been performed within the delay which was agreed.
3. If the non-observance of the delays results from reasons which the supplier must not assume liability of (e.g. war, uproar, strike, lock-out, natural disaster, the supply to the supplier was not made in due time nor diligence), the delay shall be reasonably extended at least by 4 (four) weeks to be counted from the day of the disappearance of the obstruction. In the event of a non-observance of the delay the orderer, for him to provide such evidence, may claim an indemnification for the delay to a maximum of 0.5 %, i.e. to an overall amount of as much as 5 (five) per cent of the value of the part of the delivery or of the performance which could not be made to fit the purposes of operation as a result of non-complement of single objects or those belonging to it.
The orderer shall also be entitled to claim the payment of indemnification if the conditions which are outlined in subparagraph 3, section 1 take effect only following a faulty excess of the delivery time which was initially agreed.
Further claims for indemnity are excluded to the exception of those which result from intentional or gross negligence on the side of the supplier. The right of the orderer to rescind the contract shall be maintained as far as the supplier is to be held liable for the delay.
4. In the event that the orderer requests a delay of shipment or of delivery, the orderer may be charged, after 1 (one) month following the notice of readiness for delivery, storage fees for each commenced month of as much as 0.5 per cent of the invoice amount, which is however limited to a maximum of 5 (five) per cent, unless higher or lower storage fees are proved.

VII. Transfer of Perils

- The perils will be transferred to the orderer:
 - Upon delivery not including set-up or mounting if the delivery ready-for-operation was either transferred for shipment or picked up. Upon the orderer's request and at his expenses, the delivery will be insured against usual risks of transportation.
 - Upon delivery including set-up or mounting upon the day of receipt in the orderer's own operation, provided that the receipt in the own operation concludes immediately to the set-up or mounting ready-for-operation. If the receipt is delayed by more than 14 (fourteen) days, the perils which result from the delay shall be transferred to the orderer.
 - As far as agreed consecutively to a test run free of objection, however at the point of time at which the orderer would be legally bound to homologate the matter. An objection to the homologation by reason of unsubstantial defaults shall be excluded.
- If the shipment, the delivery, the beginning or the performance of the set-up or mounting is delayed upon the orderer's request or at his liability, the perils shall be transferred to the orderer for the time during which the delay lasts.

VIII. Set-up or Mounting

- For each type of set-up or mounting, the following provisions shall be apply: a) The orderer shall bear the cost of the following and provide in timely fashion:
 - Auxiliary teams such as subworkers and if required, in good numbers, bricklayers, carpenters, locksmiths, crane operators and other skilled workers, each of whom disposing of the tools they need.
 - All work with regard to earth, bedding, construction, knocking, scaffolding, plastering, painting and other side work which is not related to the construction trade, including the construction material needed.
 - The equipment and material needed for mounting and putting into operation such as elm wood, wedges, paddings, cement, plastering and sealing, lubricants, fuels etc. In addition to that scaffolds, lifting tools and other devices.
 - Power supply and water including the connectors to the place of use, heat- ing and general lighting.
 - At the mounting site a sufficient number of rooms which can be locked and which are big and dry enough for the maintenance of machine parts, de- vices, tools etc., and for the mounting personnel working and staff rooms which include sanitary installations appropriate to construction site condi- tions. In addition, the orderer shall take those measures in order to protect the contractor's property and the mounting personnel on the construction site which he would take in order to protect his own property.
 - Protective clothing and devices which are needed as a result of special cir- cumstances which emanate from the mounting site and are not of contrac- tor's usual trade.
 - The orderer shall unsolicitedly provide all information with regard to the position of covered supply lines of power, gas and water and similar installation as well as to the statics of the construction prior to the beginning of the mounting work.
 - Prior to the beginning of the set-up or mounting work, all delivery parts which are required in order to start work must be on-site; and all bricklaying, carpenter and other preliminary work shall have progressed so far that the set-up or mounting may be performed right upon the arrival of the set-up or mounting personnel and be commenced as well as performed without interruption. In partic- ular, the delivery ways and the set-up or mounting site must be floor-levelled and cleared, the foundation wall must be set and dried, the foundation wall erected and filled; in case of an inside set-up the wall and ceiling plastering be entirely completed, notably doors and windows be installed.
 - If the set-up, mounting or start-up is delayed as a result of conditions which stem from the construction site at no fault of the supplier, the orderer shall bear all cost in connection with waiting time and further necessary travelling of the set-up or mounting personnel.
 - The orderer shall confirm at his best knowledge the working time of the set-up or mounting personnel on a weekly basis. In addition, the orderer is obliged to pro- duce immediately to the set-up or mounting personal a confirmation in writing of the termination of the set-up or mounting work.
 - The supplier shall assume liability only for the orderly handling and set-up or mounting of the delivery parts, he shall not assume liability for the work of the party who is charged with the set-up or its personnel and other subcontractors as far as these works are not connected to the delivery and the set-up or as far these same works have been prompted by the orderer.
- If the supplier has taken at his charge the set-up or mounting against separate bill- ing, the following provisions shall apply in addition:
 - The orderer pays to the supplier the charge rates which have been agreed upon the issuance of the order for working time and the additional cost in con- nection with overtime work, work at nights, on Sundays and holidays, for work under aggravated circumstances as well as for planning and supervision work. Times related to preparation, travelling, running, call-backs as well as waiting times the supplier is not liable for shall be considered working time.
 - In addition, the following cost shall be paid separately:
 - Travelling cost, cost for the transportation of craftsmens' tools and personal luggage.
 - Allowances for the working time as well as for days of rest and holidays.

IX. Warranty

- The orderer shall inspect the consignment immediately upon delivery. If the con- signment shows obvious defects or if a consignment obviously other than the one which was ordered has been delivered, the orderer shall immediately notify the supplier in writing, however within 1 (one) week's time. Otherwise the delivery shall be considered approved as far as the orderer is a merchant to the extent of the commercial code or a legal entity of public law.
- The supplier shall not assume liability for defects which result from improper treatment of the consignment.

- The supplier shall assume liability for defects as follows:

- All those parts or performances shall be repaired or performed again free of charge at the supplier's choice which within six months' time to be counted from the transfer of perils – regardless of the operating time - cannot be used any further as a proven result of a defective making, poor material or poor con- struction or whose usability was substantially affected. The supplier's choice is extended to the place of repair, too. As the case may be, the buyer shall send at his own cost and at his own risk the matter which is to be repaired to the supplier's factory.

The supplier shall not assume liability for the replacement of typical wear and tear parts. With regard to third-parties' products, the supplier's liability shall be limited to the assignment of those liability claims which he is entitled to against the supplier of the third-party products. The supplier shall be immediately given notice in writing of those defects found, however at the latest within 1 (one) week's time consecutive to learning of them.
- The orderer is bound to observe the contractual obligations, in particular the payment conditions which have been agreed. If a notice of defects is asserted, the orderer's payments may be retained to that extent which reflects the fair proportion of the defects which have shown. If the contract belongs to the oper- ation of a trade, the orderer may retain payments only if a notice of defect that is beyond any doubt is sent.
- With regard to the repair of defects, the orderer shall grant the supplier a rea- sonable period of time of at least 10 (ten) days. If he refuses to do so, the sup- plier shall be exonerated from liability for defects.
- If the supplier fails to observe a reasonable period of grace which was granted to him without performing the repair or if the repair is impossible or the supplier refuses the repair, the orderer shall be entitled to the right of mitigation. If the orderer and the supplier fail to agree upon mitigation, the orderer shall be enti- tled to rescind the contract.
- In all cases, the rights of warranty shall come under the statute of limitation within 12 (twelve) months' time, to be counted from the limitation which is pre- scribed by law. As far as the Civil Code (BGB) stipulates extended periods, these shall be applied.
- The liability for defects shall not be related to usual wear and tear, and further- more not to damages which result from the transfer of perils as a consequence of non-conforming or negligent treatment, excessive exposure, improper oper- ating means, defective construction works, improper soil and impacts of chemi- cal, electro-chemical or electric impacts, which are not required according to the contract.
- The liability for consequences which result from modifications or repair work that may have been performed improperly on the side of the orderer or third- parties shall be revoked.
- Further claims on the side of the orderer against the provider and his agent shall be excluded, notably the compensation for damages which did not occur on the object of delivery itself. This shall not apply as far as the law stipulates a liability in cases of premeditation and gross negligence.
- The sub-sections a) to h) shall apply accordingly to those claims of the orderer for repair, replacement delivery, or indemnification which result from proposals or consulting that have been performed prior to the making of the contract or from the breach of a contractual duty of contract.

X. Frustration, Adaptation

- If the supplier or the orderer is frustrated from the delivery which he is bound to per- form, the common principles of law shall be applied with the following requirements: If the frustration results from the supplier's fault, the orderer shall be entitled to de- mand indemnification. However, the orderer's right for indemnification shall be limited to 5 (five) per cent of that part of the delivery which cannot be used by reason of the frustration. This limitation shall not apply as far as a liability is stipulated by law with regard to cases of premeditation, gross negligence or injury of life, body or health. The right for a rescission of contract shall be exonerated.
- If unforeseen events to the extent of VI., sub-section 3 modify substantially the economic meaning or the contents of the delivery or performance or exert a sub- stantial impact on the supplier's operation, the contract shall be reasonably adapted. As far as this is not justified in terms of business, the supplier shall be entitled to rescind the contract. If he wishes to make use of his right for rescission, he shall be bound to inform the orderer immediately thereof as he learns of the extent of this event, namely in such case, too, in which an extension of the delivery period was initially agreed.

XI. Additional Claims for Indemnity

Other claims for indemnity of the orderer against the supplier, his agent and subcon- tractor are excluded regardless of any legal grounds. IX. sub-section 3. h) shall apply accordingly. With regard to the statute of limitation of possible claims for indemnifica- tion, section IX 3. e) shall be applied.

XII. Court of Jurisdiction/Applicable Law

- If the orderer is a merchant, the general court of jurisdiction shall be at the sup- plier's choice his headquarters or subsidiary with regard to all disputes which re- sult mediately or immediately from the contractual relation.
- With regard to the contractual legal relations, German law shall apply.
- The application of the UN Convention on Contracts for the International Sale of Goods (CSIG) shall be declared non-applicable.

XIII. Final Clause

If one or more clauses contained in the contract including the GSCD should be held entirely or partially invalid or if the contract contains a gap of provision, the effective- ness of the contract and the remaining provisions shall not be affected as far as the parties to the contract can be expected to accept so. In lieu of the provisions invalid or missing the respective statutory provisions shall be applied.